In the High Court of Judicature at Madras

Dated : 11.8.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.28162 & 28163 of 2016
& WMP.Nos.24295 and 24296 of 2016

M/s.Frontline Engineering Services,
rep.by its Partner ..Petitioner in both WPs.

Vs

1.The Commercial Tax Officer,
Esplanade Assessment Circle,
Chennai.

2.The Managing Director, Chennai
Metropolitan Water Supply &
Sewerage Board, Chintadripet,
Chennai-2. ..Respondents in both WPs.

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the first respondent in his proceedings respectively in TIN No.33450021184/2013-14 and 33450021184/2014-15 and quash the assessment orders respectively dated 8.7.2016 and 15.7.2016 passed therein.

For Petitioner : Mr.P.Rajkumar
For Respondent-1 : Mrs.Vasudha Thiagarajan, AGP
For Respondent-2 : Mr.M.Jothikumar

COMMON ORDER

Mrs.Vasudha Thiagarajan, learned Additional Government Pleader accepts notice for the first respondent. Mr.M.Jothikumar, learned Standing Counsel accepts notice for the second respondent. Heard both. By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a manufacturer of de-silting machines and registered as a dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The petitioner was awarded a tender for supply and delivery of de-silting machines for sewer maintenance including maintenance contract for maintaining the machines and rate contract for de-silting the manhole chambers. The petitioner entered into an agreement with the second respondent Board and

the contract was to be performed by the petitioner by procuring de-silting machines from Ahmedabad and the three wheelers and the four wheelers, on which, the machines are to be mounted, should be registered in the name of the second respondent Board.

3. In the purchase orders issued by the Board, the price fixed is inclusive of all taxes and statutory levies. The petitioner accordingly purchased the de-silting machines from Ahmedabad and procured three three wheelers and four wheelers from the dealers at Chennai upon sufferance of tax at 14.5%. The tax invoices were raised for the chassis in the name of the second respondent and in the account of the petitioner, since the vehicles had to be registered in the name of the second respondent Board.

4. The petitioner relied upon a Government Order in G.O.Ms.No.77 dated 11.7.2011 issued by the Government of Tamil Nadu granting reduced rate of tax at 5% on the supply of any goods. In respect of the assessment year 2013-14, the petitioner filed monthly returns reporting their total and taxable turnover and in as much as the price agreed was an all inclusive price, the petitioner filed monthly returns after deducting the tax at 5% from the value shown in the invoices raised on the second respondent Board and remitted the same towards tax. The petitioner also claimed input tax credit on local purchases of the chassis.

5. The first respondent issued the pre-assessment notice dated 27.11.2015 for the assessment year 2013-14 and the pre-assessment notice dated 10.3.2016 for the assessment year 2014-15. The petitioner filed their objections on 2.3.2016 and written submissions on 4.3.2016 for the assessment year 2013-14. However, on 24.5.2016, one of the partners of the petitioner namely Mr.Zulfikar Barodawala died. Therefore, no objections could be filed for the pre-assessment notice for the year 2014-15. Thereafter, the impugned orders of assessment were passed on 8.7.2016 and 15.7.2016 for both the years.

6. The learned counsel for the petitioner submitted that the partner of the petitioner, who passed away, participated in the personal hearing and produced all the documents. Yet, the first respondent recorded certain findings in the impugned assessment orders, which are contrary to facts. By way of an illustration, it is pointed out that the Assessing Officer stated as if the petitioner themselves admitted that the name, address and tax payer identification number of the petitioner were not available in the invoices. This is factually incorrect. The learned counsel for the petitioner referred to invoices issued by M/s.S.N.R.Motor and M/s.ACT India, which show that the name of the petitioner as well as the name of the second respondent have been mentioned.

7. Therefore, he has submitted that the impugned orders proceeded on the misconception of facts. That apart, it is pointed out that a reference has been made to Section 19(7)(b) of the State Act, which was not referred to in the pre-assessment notices and in fact, in the pre-assessment notices, the Authority proceeded on the ground of 'mismatch'. Thus, it is submitted that there are several factual errors, which have crept in the impugned orders and this appears to be on account of the fact that the deceased parter of the firm could not explain, in proper manner, the scope of the contract.

8. In my view, all these factual issues cannot be adjudicated in a writ petition. However, according to the petitioner, if the Authority has missed out certain vital factual information, there is sufficient power for the Authority to revise and rectify his orders in terms of Section 84 of the State Act. Therefore, in my considered view, the petitioner should go before the Assessing Officer, file a petition under Section 84 of the State Act, point out all these factual inconsistencies and explain the scope of the contract. If that is done, then the first respondent shall re-consider the matter and examine as to whether there are any factual errors, which have crept in, while completing the assessment.

9. In the light of the above, the writ petitions are disposed of by directing the petitioner to file petitions under Section 84 of the State Act within a period of four weeks from the date of receipt of a copy of this order. On receipt of the same, the first respondent shall afford an opportunity of personal hearing to the authorized representative of the petitioner, examine the documents and thereafter proceed in accordance with law. It is also open to the first respondent to call for any details from the second respondent Board with regard to the scope of the contract and as to the claim made by the petitioner with regard to the payments effected by them and pass a speaking order on merits and in accordance with law. Till orders are passed on the petitions under Section 84 of the State Act, the impugned orders shall be kept in abeyance. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Esplanade Assessment Circle, Chennai.

2.The Managing Director,
Chennai Metropolitan Water Supply &
Sewerage Board, Chintadripet, Chennai-2.

+1cc to Mr.P. Rajkumar, Advocate, S.R.No.45925
+1cc to the Government Pleader, S.R.No.46115

SR(CO)
EU(06/09/2016)

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